

151 FERC ¶ 61,074
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

California Independent System
Operator Corporation

Docket Nos. ER15-1451-000
ER14-480-000

ORDER ON REQUEST FOR WAIVER

(Issued April 29, 2015)

1. On April 3, 2015, in Docket No. ER15-1451-000, California Independent System Operator Corporation (CAISO) filed a request for waiver of provisions in sections 30.9, 30.7.3.6.3, and 30.7.3.6.3.2 of the CAISO tariff, which provide for reinstatement of intertie convergence bidding on May 1, 2015. In support of its request for waiver, CAISO attached a report (April 3 Supplemental Report) by its Department of Market Monitoring (DMM) stating that reinstatement of convergence bidding at the interties under current circumstances would lead to market inefficiencies. CAISO also submitted the April 3 Supplemental Report in Docket No. ER14-480-000, in which, as further discussed below, the Commission previously issued an order directing CAISO to submit informational reports relevant to reinstatement of intertie convergence bidding.¹

2. In this order, we grant a limited waiver, effective May 1, 2015, subject to further order. Given the issues raised in the protests in this proceeding in response to CAISO's waiver request and the new information contained in the April 3 Supplemental Report which is inconsistent with a December 31, 2014 informational report (December 31 Informational Report) that CAISO submitted in Docket No. ER14-480-000,² we find that the Commission and parties would benefit from further development of the record in this case. We will therefore seek additional comments on the April 3 Supplemental Report, as well as comments on the December 31 Informational Report. Granting temporary

¹ *California. Indep. Sys. Operator Corp.*, 146 FERC ¶ 61,204, at P 103 (2014) (March 2014 Order).

² The December 31 Informational Report supported the reinstatement of convergence bidding at the interties, beginning on May 1, 2015.

waiver of the May 1, 2015 implementation of intertie convergence bidding will allow the Commission to develop a full record of matters relevant to CAISO's request for waiver, including information in the December 31 Informational Report and April 3 Supplemental Report prior to issuing a further order addressing the waiver request, as discussed below.

I. Background

3. Convergence bids in the CAISO market, also known as virtual bids, are financial bids to buy or sell electricity in the day-ahead market without any obligation to physically provide or consume electricity. If a convergence bid is cleared in the day-ahead market, it is automatically liquidated with the opposite buy/sell position at the real-time price.

4. Convergence bidding in the CAISO market was first implemented on February 1, 2011, at both internal nodes and the interties. Shortly thereafter, CAISO determined that convergence bidding entities were able to exploit the real-time bifurcated settlement structure in existence at that time, i.e., CAISO settled intertie transactions based on forecasted demand reflected in the hour-ahead scheduling process and internal transactions were settled based on real-time market conditions, which led to increased costs to ratepayers. Consequently, on September 21, 2011, CAISO filed a tariff amendment to discontinue convergence bidding at the interties. The Commission accepted and suspended CAISO's proposal, for a nominal period, effective November 28, 2011, and conditioned its acceptance subject to the outcome of a technical conference and further Commission order.³ The Commission convened a technical conference on February 2, 2012.

5. Following the technical conference, the Commission issued an order on May 2, 2013, conditionally accepting CAISO's proposal to suspend intertie convergence bidding, effective November 28, 2011.⁴ The Commission found that "the costs associated with intertie convergence bidding outweigh the limited benefits being realized under the existing real time market based structure."⁵ The Commission also stated that CAISO "should focus its efforts on developing a comprehensive, long-term structural solution that will permit the reinstatement of intertie convergence bidding with just and reasonable outcomes, improving market efficiency by committing supply resources to meet real-time

³ *California Indep. Sys. Operator Corp.*, 137 FERC ¶ 61,157, at P 38 (2011).

⁴ *California Indep. Sys. Operator Corp.*, 143 FERC ¶ 61,087, at P 61 (2013) (May 2013 Order).

⁵ *Id.* P 61.

needs.”⁶ Therefore, the Commission directed CAISO to within 12 months: (1) file tariff changes to reinstate intertie convergence bidding and address the underlying issues with the dual real-time market structure, or (2) submit an informational filing reflecting the reasons why CAISO has not addressed the dual real-time market structure issues and cannot reinstate intertie convergence bidding at that time.⁷

6. CAISO included intertie convergence bidding in a stakeholder initiative to address compliance with Order No. 764⁸ and, on November 26, 2013, proposed tariff revisions to (1) comply with Order No. 764, and (2) phase-in the reinstatement of convergence bidding at the interties. The Commission issued an order on March 20, 2014 that, among other things, (1) accepted tariff revisions to establish a 15-minute market to schedule and settle both intertie and internal resources at the same financially binding 15-minute intervals, effective May 1, 2014, and (2) conditionally accepted tariff revisions to phase-in the reinstatement of convergence bidding at the interties, effective May 1, 2015.⁹ In finding CAISO’s proposal to reinstate convergence bidding at the interties was just and reasonable, the Commission stated that:

[I]n light of the previous issues with substantial uplift that led to the suspension of intertie convergence bidding, and the magnitude of the market design changes being proposed here, we will condition our acceptance of CAISO’s proposal to reinstate convergence bidding, 12 months after implementation of the 15-minute market, on CAISO filing a report to demonstrate that the new market structure is providing the expected price convergence and that the issues that resulted in the suspension of intertie convergence bidding have been resolved. This report should demonstrate that the new market design is working to reduce systemic price

⁶ May 2013 Order, 143 FERC ¶ 61,087 at P 61.

⁷ *Id.* P 76. Any informational filing must also apprise the Commission of the progress toward developing a solution to permit reinstatement of interties convergence bidding. The Commission further noted that such informational filing would not be noticed or require any Commission action.

⁸ *Integration of Variable Energy Resources*, Order No. 764, FERC Stats. & Regs. ¶ 31,331, *order on reh’g and clarification*, Order No. 764-A, 141 FERC ¶ 61,232 (2012), *order on clarification and reh’g*, Order No. 764-B, 144 FERC ¶ 61,222 (2013) (Order No. 764).

⁹ March 2014 Order, 146 FERC ¶ 61,204 at PP 53, 96-97.

divergence and should also discuss whether the anticipated benefits of intertie convergence bidding outweigh any expected market inefficiencies, including any risk of market manipulation.^{10]}

7. In response to that directive, CAISO submitted the December 31 Informational Report. In that report, CAISO stated that the data contained therein supported the reinstatement of convergence bidding at the interties on May 1, 2015. CAISO further noted that if new data suggested otherwise, it would inform the Commission and take appropriate actions to address those issues.¹¹ On February 10, 2015, Pacific Gas and Electric Company (PG&E) filed comments on the December 31 Informational Report, requesting that CAISO's DMM be required to evaluate whether there are any ongoing concerns surrounding intertie convergence bidding prior to reinstatement. PG&E expressed concern that the information in CAISO's report did not provide sufficient information to conclude that convergence bidding should be reinstated by May 1, 2015.¹²

8. Subsequently, CAISO filed the April 3 Supplemental Report, both as part of its waiver request in Docket No. ER15-1451-000 and in Docket No. ER14-480-000. The April 3 Supplemental Report stated that reinstating convergence bidding at the interties under current circumstances would lead to market inefficiencies that are not outweighed by the benefits provided by convergence bidding. The report concluded that, given the lack of liquidity in CAISO's 15-minute market, CAISO should not reinstate intertie convergence bidding on May 1, 2015.¹³

II. Request for Waiver

9. Based on the April 3, 2015 Supplemental Report, CAISO states that it has determined that the potential benefits of reinstating intertie convergence bidding at this time are outweighed by market inefficiencies due to a lack of intertie economic bids in the 15-minute market.¹⁴ CAISO requests that the waiver remain in effect for a maximum

¹⁰ *Id.* P 103.

¹¹ A notice of filing was not issued in response to the December 31 Informational Report. *See* March 2014 Order, 146 FERC ¶ 61,204 at n.89.

¹² PG&E February 10, 2015 Informational Report Comments in Docket No. ER14-480-000.

¹³ April 3 Supplemental Report at 1.

¹⁴ *Id.* at Figure 1.

of 12 months, i.e., May 1, 2016, or until such time as CAISO makes a filing under section 205 of the Federal Power Act,¹⁵ proposing to amend the tariff provisions relating to intertie convergence bidding.¹⁶

10. CAISO explains that reinstating intertie convergence bidding under the current market conditions would create incentives for entities engaged in convergence bidding to unfairly profit from differences in congestion prices between the day-ahead market and the 15-minute market, caused by low market liquidity of the 15-minute market at the interties. Specifically, CAISO explains that there is a lack of economic bids in the 15-minute market at the interties, which means that there generally will be no congestion price reflected in the locational marginal prices for the 15-minute market at those locations. This, CAISO explains, creates a discrepancy between day-ahead and 15-minute market prices that will provide an incentive for market participants to submit convergence demand bids to unfairly arbitrage these predictable price differences, to the detriment of market efficiency.¹⁷

11. CAISO states that it does not yet understand the reasons for low market liquidity at the interties in the 15-minute market at the interties. However, based on informal feedback from market participants, CAISO states that possible causes may include (1) neighboring balancing authority areas not supporting 15-minute schedule changes, (2) difficulty in procuring transmission in 15-minute blocks, (3) an absence of bilateral trading at a 15-minute granularity, and (4) reticence of resource owners to adjust their output within the hour.¹⁸

12. CAISO states that it has no reason to believe that market liquidity at the interties in the 15-minute market will increase prior to, or upon reinstatement of, intertie convergence bidding. Thus, CAISO requests a 12-month maximum waiver to allow it to investigate the causes underlying the lack of liquidity at the interties in the 15-minute market and explore, through a stakeholder process, whether there are potential solutions that would allow the reintroduction of convergence bidding at the interties in a manner that ensures that the benefits outweigh any market inefficiencies.¹⁹

¹⁵ 18 U.S.C. § 824d (2012).

¹⁶ CAISO April 3, 2015 Transmittal at 1-2 and 14 (CAISO Transmittal).

¹⁷ CAISO Transmittal at 10.

¹⁸ *Id.* at 9-10.

¹⁹ *Id.* at 9-10 and 14-15.

13. CAISO contends that good cause exists to grant its requested waiver and that the Commission has granted similar waiver requests.²⁰ First, CAISO states that the waiver is of limited scope, since it maintains the status quo for a maximum period of 12 months. Second, CAISO states that the waiver will remedy a concrete problem, because it will provide sufficient time for CAISO to seek stakeholder input on the underlying causes of the lack of liquidity at the interties and determine whether there are solutions that would permit the reinstatement of convergence bidding at the interties. Finally, CAISO states that the waiver will not have undesirable consequences, such as harming third parties, because no undesirable consequences have resulted in the absence of convergence bidding at the interties, and, to the contrary, it will prevent market participants from exploiting the arbitrage opportunity that DMM has recently identified.²¹

14. CAISO requests that Commission act on its request by April 28, 2015, so that it can make the appropriate system settings that will either (1) ensure that intertie convergence bidding will not be reinstated on May 1, 2015, if the Commission grants the requested waiver, or (2) allow intertie convergence bidding to move forward on May 1, 2015, if the Commission does not grant the requested waiver.²²

III. Notice and Responsive Pleadings

15. Notice of CAISO's filing was published in the *Federal Register*, 80 Fed. Reg. 19,656 (2015), with interventions and protests due on or before April 13, 2015. Timely motions to intervene were filed by XO Energy CAL, LP; City of Santa Clara, California and the M-S-R Public Power Agency, jointly; Modesto Irrigation District, Boston Energy Trading and Marketing LLC; NRG Power Marketing LLC and GenOn Energy Management Companies, collectively NRG Companies; and the cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (collectively, Six Cities).

²⁰ CAISO Transmittal at 14 (citing *see, e.g., New York Independent System Operator, Inc.*, 146 FERC ¶ 61,061, at P 19 (2014); *PJM Interconnection, L.L.C.*, 141 FERC ¶ 61,103, at P 8 (2012); *ISO New England Inc.*, 134 FERC ¶ 61,182, at P 8 (2011); *California Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,004, at P 10 (2010)).

²¹ *Id.* at 14-16.

²² *Id.* at 16. CAISO also requested a shortened comment period of seven days. On April 6, 2015, a notice was issued establishing April 13, 2015 as the last date for parties to submit timely comments.

16. On April 7, 2015 and April 8, 2015, respectively, Powerex Corporation (Powerex) and the Western Power Trading Forum (WPTF) filed a motion to intervene, comments, and request and extension of the deadline for comments.

17. On April 13, 2015, motions to intervene and comment were filed by Six Cities, PG&E, Southern California Edison Company (SoCal Edison), California Department of Water Resources State Water Project (SWP), San Diego Gas & Electric Company (SDG&E), and Northern California Power Agency (NCPA). On the same day, Powerex filed comments, SESCO CALISO LLC (SESCO) filed a motion to intervene and comments, and WPTF filed comments and protests.

18. On April 15, 2015, the Public Utilities Commission of the State of California (CPUC) filed an untimely motion to intervene.

19. On April 20, 2015, CAISO and PG&E filed separate answers to the protests filed by WPTF and Powerex. On April 24, 2015, Powerex filed an answer to CAISO's April 20 answer.

20. PG&E, SDG&E, SoCal Edison, NCPA, and SWP support delaying the re-instatement of convergence bidding on the interties until May 1, 2016, or until CAISO can demonstrate that the market can function properly.²³ Generally, these parties argue that reinstating intertie convergence bidding at this time, with a significant lack of economic bids in the 15-minute market, would result in windfall profits for the entities engaged in convergence bidding without the desired effect of price convergence and improved market efficiency.²⁴ PG&E asserts that the waiver request complies with the Commission's waiver requirements,²⁵ and Six Cities contends that granting the waiver is consistent with the concerns the Commission identified in the March 2014 Order directing CAISO to submit a report evaluating whether "the anticipated benefits of

²³ PG&E April 13, 2015 Comments at 3 (PG&E Comments); Six Cities April 13, 2015 Comments at 1 (Six Cities Comments); NCPA April 13, 2015 Comments at 3-4 (NCPA Comments); SoCal Edison April 13, 2015 Comments at 2-3 (SoCal Edison Comments); SWP April 13, 2015 Comments at 4-5; SDG&E April 13, 2015 Comments at 3.

²⁴ PG&E Comments at 3-4; Six Cities Comments at 2-3; SoCal Edison Comments at 2; SWP Comments at 4-5.

²⁵ PG&E Comments at 3.

intertie convergence bidding outweigh any expected market inefficiencies, including any risk of market manipulation.”²⁶

21. Powerex, SESCO, and WPTF argue that expedited treatment is not warranted or necessary and that more time should be given to interested parties and the Commission to fully consider the issues raised by CAISO’s filing. SESCO and WPTF assert that the December 31 Informational Report found no basis for CAISO to delay reinstating intertie convergence bidding on May 1, 2015; however, they argue, CAISO is now attempting to unnecessarily delay convergence bidding for an additional year, without adequate stakeholder vetting or due process, pointing out that CAISO’s assessment is not based on new information.²⁷

22. SESCO asserts that contrary to CAISO’s claims, CAISO’s expedited request does not meet the requirements for a waiver. SESCO argues that the request is not limited in scope, does not address a concrete issue, and has undesirable consequences. Specifically, SESCO argues that if CAISO’s request is granted, the waiver will span an additional year, which will double the time frame during which convergence bidding has been withheld from market participants since CAISO implemented the 15-minute market.²⁸ As for addressing a concrete issue, SESCO asserts that the April 3 Supplemental Report does not provide substantial evidence to counter the fact that December 31 Informational Report stated that nothing was preventing CAISO from reinstating intertie convergence bidding on May 1, 2015.²⁹ In regards to the consequences of the waiver, SESCO argues that the waiver will continue to deny market participants the opportunity to hedge certain transactions.³⁰

²⁶ Six Cities Comments at 3 (citing March 2014 Order, 146 FERC ¶ 61,204, at P 103).

²⁷ SESCO April 13, 2013 Comments at 10-11 (SESCO Comments); WPTF April 8, 2015 Comments at 4-6.

²⁸ SESCO Comments at 8.

²⁹ *Id.* at 8 (stating that the report presents three scenarios, does not calculate the likelihood or extent that the market will be harmed if intertie convergence bidding is reinstated).

³⁰ *Id.* at 8-10.

23. While Powerex agrees with CAISO that at the present time it would be inappropriate to reinstate intertie convergence bidding, it asserts that CAISO has not accurately identified the impediments to reinstituting intertie convergence bidding.³¹ Powerex asserts that there are fundamental price formation issues that should be addressed before the reinstatement of convergence bidding at the interties will lead to price convergence or efficient dispatch of resources. To ensure that intertie convergence bidding is timely reinstated, Powerex and WPTF support a process whereby the Commission should structure and preside over further efforts by CAISO to identify and resolve the issues that are impeding the reintroduction of intertie convergence bidding.³²

IV. Discussion

A. Procedural Matters

24. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceeding.

25. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2014), the Commission will grant the CPUC's late-filed motion to intervene given its interests in the proceeding, the early stage of the proceeding, and absence of undue prejudice or delay.

26. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers filed by PG&E, CAISO, and Powerex, and will, therefore, reject them.

B. Commission Determination

27. We will grant CAISO a limited waiver of tariff sections 30.9, 30.7.3.6.3, and 30.7.3.6.3.2, effective May 1, 2015, subject to a further order. We find that a limited waiver is appropriate given that the basis for CAISO's waiver request, the April 3 Supplemental Report, reverses CAISO's previous determination in the December 31 Informational Report that it was prepared to reinstate intertie convergence bidding on May 1, 2015. As a result of this reversal, as well as the issues raised by protestors here, we find that it would benefit the Commission and the parties to further develop the record to address issues related to CAISO's waiver request. To that end, we are concurrently

³¹ Powerex April 13, 2015 Comments at 1, 11-12. (Powerex April 13 Comments).

³² Powerex April 13 Comments at 26-27; WPTF Comments at 13.

issuing a notice in Docket No. ER14-480-000 to allow for comments on the December 31 Informational Filing, as well as to provide for an additional 21-day period for comments on the April 3 Supplemental Report.³³ Accordingly, we grant a limited waiver of sections 30.9, 30.7.3.6.3, and 30.7.3.6.3.2 of the CAISO tariff until such time as the Commission issues a further order addressing the merits of CAISO's waiver petition.

The Commission orders:

CAISO is hereby granted a limited waiver of tariff sections 30.9, 30.7.3.6.3, and 30.7.3.6.3.2, effective May 1, 2015, subject to a further order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

³³ As noted above, the April 3 Supplemental Report was appended to CAISO's waiver request and, therefore, was subject to the 10-day notice period established for this proceeding.